

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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KRISTEN GOOCH,

Plaintiff,

V.

MERCK, SHARP & DOHME CORP, d/b/a
MERCK,

Defendant.

Case No. 2:12-cv-02176-APG-CWH

**ORDER DENYING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND DISMISSING THE
CASE WITHOUT PREJUDICE**

(Dkt. No. 21)

¹ (Dkt. No. 22-1.)

² (Compl., Dkt. No. 1 at 10-14.)

³ 29 U.S.C. §§ 1001–1461.

⁴ (Notice of Removal, Dkt. No. 1 at 3-5.)

1 Merck has moved for summary judgment, contending that (1) the Plan is an ERISA
 2 benefits plan and therefore governed by ERISA; (2) Gooch's state-law claims are preempted by
 3 ERISA; (3) Gooch failed to exhaust her administrative remedies as required under ERISA; and
 4 (4) even if Gooch exhausted her administrative remedies, the evidence indicates that Merck's
 5 decision to deny severance pay was not arbitrary or capricious.⁵

6 In response, Gooch agrees that the Plan is governed by ERISA, that ERISA preempts her
 7 state-law claims, and that she has not exhausted her administrative remedies.⁶ She requests that I
 8 dismiss her claims without prejudice so that she may pursue an administrative remedy.⁷ In light
 9 of Gooch's admissions, I agree that dismissal without prejudice is the appropriate course of
 10 action. "Exhaustion of internal administrative procedures is ordinarily required as a prerequisite
 11 for filing a civil action" under ERISA.⁸

12 **IT IS THEREFORE ORDERED** that this case is dismissed so that Gooch may pursue
 13 an administrative remedy under the Severance Benefits Plan. Dismissal is without prejudice as to
 14 any of the parties' claims or defenses.⁹

15 **IT IS FURTHER ORDERED** that Merck's motion for summary judgment (Dkt. No. 21)
 16 is DENIED as moot.

17 Dated: August 11, 2014.



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 20 ANDREW P. GORDON
 21 UNITED STATES DISTRICT JUDGE
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24 ⁵ (Dkt. No. 21.)

25 ⁶ (Dkt. No. 22 at 4, 6.)

26 ⁷ (*Id.* at 6.)

27 ⁸ *Cam v. Carpenters' Pension Trust Fund for N. Cal.*, 989 F.2d 313, 315 (9th Cir. 1993).

28 ⁹ In so ruling, I make no finding or conclusion as to whether Gooch has a right to pursue an
 administrative remedy, whether she has waived any such right, and whether such an attempt would be
 timely. Merck retains all affirmative defenses.